



May 12, 2014

EPA Responses to Comments on
*EPA Policy on Environmental Justice for
Working with Federally Recognized Tribes and Indigenous Peoples*

In Feb 2012, the Agency consulted with tribes and engaged the public on the concept of developing an environmental justice policy for tribes and indigenous peoples. EPA introduced the four focus areas of the proposed policy (Federally Recognized Tribal Governments, EPA's Direct Implementation, Community Engagement, and Interagency Coordination). From November 2012 to February 2013 the Agency consulted with tribes and in January and February 2013 sought public comment on the Working Draft version of *EPA Policy on Environmental Justice for Tribes and Indigenous Peoples*.

This document contains the Environmental Protection Agency's (EPA) responses to the consolidated comments received from tribes and the public comment period between November 5, 2012 and February 29, 2013 on EPA's Working Draft of its *Policy on Environmental Justice for Tribes and Indigenous Peoples* (Policy). As a result of the comments received, EPA has made significant changes to the Policy. A copy of the revised Policy can be found at <http://www.epa.gov/tribal/consultation/pdf/consultation-and-coordination-on-revised-draft-epa-policy-on-ej-for-working-with-federally-recognized-tribes-and-indigenous-peoples-24APR14.pdf>. EPA is currently seeking tribal input and public comment on the Revised Draft version of *EPA Policy on Working with Federally Recognized Tribes and Indigenous Peoples* until June 5, 2014.

This document is organized into three sections: general comments on the overall policy; specific and a section on other comments received.

1. GENERAL COMMENTS

Comment: EPA should develop two environmental justice policy documents: one for federally recognized tribes, and a separate policy for indigenous peoples.

Response: EPA acknowledges that the relationship we have with federally recognized tribes is different than the relationship that EPA extends to tribal members, state recognized tribes, and others living in tribal areas. The Revised Draft seeks to balance our work with tribal governments in accordance with EPA's 1984 Indian Policy and the EPA Policy on Consultation and Coordination with Indian Tribes while at the same time recognizing our primary mission is to ensure the protection of public health and the environment.

EPA believes that a single Policy best serves EPA's goal to clarify the manner in which the Agency incorporates environmental justice into its work with both federally recognized tribes and indigenous peoples while avoiding the confusion and redundancy that may occur under two, separate, overlapping environmental justice policies.

Comment: The Working Draft (original draft policy) does not describe how environmental justice issues would be considered separate from or integrated with EPA's consultation policy.

Response: EPA's Policy on Consultation and Coordination with Indian Tribes (Consultation Policy) is a separate policy. The Consultation Policy provides assistance in determining matters appropriate for consultation with federally recognized tribes and the manner in which that consultation occurs. The Consultation Policy directs EPA to consult with federally recognized tribes on a government-to-government basis when an EPA decision or action may affect the tribal interests. EPA will consult with federally recognized tribes under the Consultation Policy on environmental justice issues as appropriate. Tribes are encouraged to raise environmental justice issues to EPA and request consultation under the Consultation Policy as appropriate.

SPECIFIC COMMENTS

As a result of comments received, EPA made significant changes in the formatting and content to the original draft policy. Comments provided by tribes are arranged under the new sections of the Revised Draft policy.

Comment: The Background and Introduction sections do not provide the clarity on how this policy addresses issues such as consultation and trust-responsibility.

Response: The original policy was reformatted in order to assist EPA staff in understanding their purpose, scope, and roles and responsibilities. The introduction and background sections have been replaced with a policy statement that provides the context and scope of this policy.

Comment: EPA should incorporate into the Policy the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP)

Response: The revised policy document states that the "EPA recognizes the importance of the United Nation's Declaration on the Rights of Indigenous Peoples and the principles that are consistent with the mission and authorities of the Agency." This statement was placed in the Environmental Justice Principles section to indicate its relevance to the 17 principles of the Policy. The UN DRIP "[W]hile not legally binding or a statement of current international law—has both moral and political force¹. Many of the principles are reflective of the "articles" expressed in the Declaration.

¹ Announcement of U.S. Support, December 16, 2010, U.S. Department of State.
<http://www.state.gov/documents/organization/184099.pdf>

Comment: EPA received the majority of its comments on the thirty-nine proposed principles and sub-principles. Many commenters offered new or revised principles.

Response: EPA acknowledges the confusion caused by the high number of principles found in the original draft policy. The revised draft policy contains 17 consolidated principles for clarity and ease of understanding. EPA sought to maintain the language and spirit of the originally listed principles throughout the revised document.

Comment: The draft principles and sub-principles are inadequate because they fail to provide the EPA with a basis for decision-making.

Response: The Revised Draft policy includes an implementation section that provides a listing of available information resource tools EPA can use to address environmental justice issues. The listing, although not exhaustive, provides an initial set of resource materials that provide direction.

Comment: How does this policy apply when overseeing or approving State-delegated programs?

Response: As noted in Principle 16 of the Revised Draft policy, EPA encourages state governments to incorporate environmental justice principles into their policies and programs that may affect tribes, indigenous peoples, and others living in tribal areas.

Comment: Although the principles are generally strong, we are concerned about EPA's use of non-mandatory language.

Response: The Agency is committed to implementing the Policy and the principles it contains. EPA does recognize that it will take some time to fully implement the principles in the Policy.

Comment: EPA needs to acknowledge its responsibility to work with tribal members, indigenous peoples and others living in tribal areas.

Response: The Agency understands its responsibility to respond to the environmental and human health concerns of tribal members, other indigenous peoples, and others living in tribal areas. The experience that the Agency has developed over the past 20 years working with non-federal government and vulnerable individuals and communities on issues of environmental justice will help the Agency assist federally recognized tribal governments as the Agency works with their tribal members, other indigenous peoples, and others living in tribal areas.

Comment: EPA should enhance its interagency and intergovernmental coordination and collaboration to address federally recognized tribes' and indigenous peoples' environmental justice concerns.

Response: EPA expanded the principles in the Revised Draft policy to include coordination and collaboration with federal, state and local governments to address environmental justice issues affecting federally recognized tribes and indigenous peoples,

and to encourage the incorporation of environmental justice principles into their programs, policies and activities.

Comment: The original draft policy does not provide any information on accountability.

Response: EPA has added a new section to identify the EPA management and staff responsible for implementing and assessing this in the Revised Draft Policy. The roles and responsibilities defined in this section reflect the fact that oversight and coordination of this Policy occurs at EPA headquarters while most implementation of this Policy occurs in program and regional offices.

Comment: The original draft policy does not provide any information on how this policy will be implemented.

Response: EPA has added a new section to the Revised Draft Policy that references the Appendix. The Appendix contains information to assist Agency management and staff to better understand and identify opportunities to effectively implement the Policy.

Comment: The use of the term “indigenous stakeholders” should be removed.

Response: EPA agrees with this comment and has replaced “indigenous stakeholders” with the term “indigenous peoples” throughout the Revised Draft Policy.

Comment: EPA should consider adding a definition section to the Policy for terms such as Indian tribes, Indian country, and indigenous peoples.

Response: EPA agrees with this comment and added a ‘Definitions’ section to the Policy. As part of the revised reformatting, definitions originally placed in endnotes now appear as part of the Definitions section.

Comment: Explain why EPA has included a ‘Disclaimer’.

Response: The Agency generally includes disclaimers in its policies to ensure readers are aware of their operational use.

3. OTHER COMMENTS

Comment: In order for the Policy to be effective, training for EPA staff is necessary.

Response: EPA employees are currently required to successfully complete *Working Effectively with Tribal Governments* training and the recently launched new training course *Introduction to Environmental Justice (EJ 101)*.

Comment: Tribal governments have raised concerns regarding EPA relationship and interactions with tribal members on environmental justice issues.

Response: EPA is committed to working with tribal governments on a government- to-government basis, including addressing environmental justice concerns. EPA is also responsible for ensuring its programs, policies and activities are implemented in an effective and fair manner, consistent with federal environmental law, which results in the Agency also working with tribal members, indigenous peoples, and others living in tribal areas.